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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,229	03/16/2004	Tatsuya Hojo	5576-158	2013
20792 7590 07/22/2008 MYERS BIGEL, SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627				
EXAMINER				
SOROUSH, ALI				
ART UNIT		PAPER NUMBER		
1616				
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07/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,229

Applicant(s)

HOJO ET AL.

Examiner

ALI SOROUGH

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 9-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4 and 9-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Acknowledgment of Receipt

Applicant's response filed on 03/28/2008 to the Office Action mailed on 11/28/2007 is acknowledged.

Status of the Claims

Claims 5-8 are cancelled and claims 10-11 are newly added. Therefore, claims 1-4 and 9-11 are currently pending examination for patentability.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The rejection of claims 1-4, and 9 under 35 U.S.C. 102(b) as being anticipated by Buschmann et al. (European Patent Application 92117883.6, Published 05/12/1993) is **maintained**.

Buschmann et al. discloses a containment device for protecting agricultural crops, wherein said containment device comprises a sex pheromone controlled release dispenser for simultaneously controlling two or more insect pests, wherein said sex pheromone controlled release dispenser comprises two or more polymeric chambers comprising two or more sex pheromones, such as (Z)-9-dodecenyl acetate (Z9-12:OAc), (Z)-9-tetradecenyl acetate (Z9-14:OAc) and/or (Z)-1-tetradecenyl acetate

(Z11-14:OAc), wherein said Z9-12:OAc has a faster diffusion rate as compared to said Z9-14:OAc and said Z11-14:OAc, due to the respective physicochemical properties (i.e., molecular weight and vapor pressure) of said sex pheromones, wherein each of said two or more polymeric chambers may be overlaid with the same pheromone permeable polymeric film laminate that may vary in size, thickness and/or shape, so as to simultaneously impart an optimal release rate of each of said two or more sex pheromones, thereby providing for the simultaneous control of said two or more insect pests (page 2, lines 1-15; page 4, lines 4-11; page 8, lines 5-7 and 12-14; page 9, lines 8-11 and 22-24; page 10, lines 1-2; page 12, lines 6-8 and 14-22; page 13, lines 20-23; page 14, lines 18 and 19; page 15, lines 7-12 and 16-18; page 16, lines 1-3 under Example 2; claims 1, 3 and 6-8).

Response to Applicants Arguments

Applicant argues that the chambers of the sex pheromone dispenser instantly claimed are covered by a film made of the same material, whereas the teachings of Buschmann et al. are directed to a dispenser having a chamber covered by films of different materials. Applicant's arguments have been fully considered but found not to be persuasive. Buschmann et al., teach "Figure 2a shows a front of view of another inventive dispenser 1, which is also equipped with two chambers 2. The chambers differ in their release surface, whereby two pheromones that diffuse at different rates can be matched to each other **using the same top film 6.**" (See page 13, Lines 20-23). For the foregoing reasons the rejection of claims 1-4, and 9 under 35 U.S.C. 102(b) is maintained.

New Grounds of Rejection

Newly added claims 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Buschmann et al. (European Patent Application 92117883.6, Published 05/12/1993).

Buschmann et al. discloses a containment device for protecting agricultural crops, wherein said containment device comprises a sex pheromone controlled release dispenser for simultaneously controlling two or more insect pests, wherein said sex pheromone controlled release dispenser comprises two or more polymeric chambers comprising two or more sex pheromones, such as (Z)-9-dodecenyl acetate (Z9-12:OAc), (Z)-9-tetradecenyl acetate (Z9-14:OAc) and/or (Z)-11-tetradecenyl acetate (Z11-14:OAc), wherein said Z9-12:OAc has a faster diffusion rate as compared to said Z9-14:OAc and said Z11-14:OAc, due to the respective physicochemical properties (i.e., molecular weight and vapor pressure) of said sex pheromones, wherein each of said two or more polymeric chambers may be overlaid with the same pheromone permeable polymeric film laminate that may vary in size, thickness and/or shape, so as to simultaneously impart an optimal release rate of each of said two or more sex pheromones, thereby providing for the simultaneous control of said two or more insect pests (page 2, lines 1-15; page 4, lines 4-11; page 8, lines 5-7 and 12-14; page 9, lines 8-11 and 22-24; page 10, lines 1-2; page 12, lines 6-8 and 14-22; page 13, lines 20-23; page 14, lines 18 and 19; page 15, lines 7-12 and 16-18; page 16, lines 1-3 under Example 2; claims 1, 3 and 6-8). Buschmann et al. teach "The design of the dispenser

with two or more chambers produces the advantage that two or more pests can be treated at the same time, in a single work operation." (See page 12, Lines 6-8).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Soroush whose telephone number is (571) 272-9925. The examiner can normally be reached on Monday through Thursday 8:30am to 5:00pm E.S.T.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number For the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ali Soroush
Patent Examiner
Art Unit: 1616

/Mina Haghighatian/
Primary Examiner, Art Unit 1616